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Subject: [REDACTED]

By Memorandum dated September 9, 2009, advice was requested regarding the application of I.R.C. § 6501(c)(4)(A). The issue is whether a Form 872 (Consent to Extend the Time to Assess Tax) signed by the taxpayer only but received by the I.R.S. before the expiration of the period of limitations on assessment is valid.

Both I.R.C. § 6501(c)(4)(A) and the corresponding regulation are clear — two timely signatures are required. Indeed, a court may rule on the validity of an interpretive regulation; however, Regulation § 301.6501(c)-1(d) is consistent with I.R.C. § 6501(c)(4)(A) and should be given deference, especially by the administrative body that promulgated it. The fact that there is no recent case law on point is no reason for the I.R.S. to take a contrary position.

The case of Rohde v. United States, 415 F.2d 695 (9th Cir. 1969), addressing the validity of a waiver of the six-year statute of limitations for collection after assessment, provides guidance. The Rohde court found that the regulation at issue reflected a considered administrative interpretation of the statute and, therefore, was entitled to respect as it did not attempt to add a requirement that did not exist. Id. at 698-9. The regulation at issue in Rohde was found to be a reasonable and valid exercise of rule-making power. Id. at 699. Note that although the Rohde court did not address the validity of a Form 872 signed by the taxpayer only, the I.R.S.'s Revised Action on Decision (1973 WL 35098) included in its conclusion a specific reference to Form 872.

The reasoning of the Rohde court applies to the issue presented herein. I.R.C. § 6501(c)(4)(A) requires that “both the Secretary and the taxpayer have consented in writing.” The corresponding regulation restates that the assessment period may be extended by agreement “in writing by the taxpayer and the district director or an assistant regional commissioner” and that such agreement “shall become effective when the agreement has been executed by both parties.” Therefore, the effective date of the waiver cannot be upon the signature of the taxpayer only and the Revenue Agent should be advised accordingly.